

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1728 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No

MULUBHA KALUBHA

Versus

MAHASHANKER HARISHANKER BHATT

Appearance:

MR BJ JADEJA for Petitioner

MR AM MEHTA for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 15/03/99

ORAL JUDGEMENT

This is tenant's revision under section 29(2) of the Bombay Rent Control Act, 1947.

The brief facts giving rise to this revision are as under.

A small room measuring 10'X10' was let out by the landlord to the respondent-tenant revisionist on monthly rent of Rs.7/- P.M.. House tax and education cess was payable by the tenant over and above Rs.7/- P.M.. The rent for 62 months fell due from the revisionist which he did not pay despite service of notice of demand dated 16.3.1989. The notice was served on 21.3.1989. This was one of the grounds for tenant's eviction. The other ground was that the tenant resides at Motakhadaba and is doing agriculture there and had been keeping room in dispute closed for more than six months before the date of the institution of the suit. On these two grounds eviction was sought and decree for arrears of rent was also prayed for.

The suit was resisted on the ground that the rent for 62 months was not due and that the defendant committed no fault in payment of rent. It was admitted that the native place of the revisionist is in village Motakhadaba where he carried on agriculture since the time of his forefathers. The disputed room was taken on rent on 1.1.1983 on Rs.7/- P.M. by the revisionist for education purposes of his children and has shifted his residence at Jamnagar and resides with his children in the suit premises at Jamnagar. It was also pleaded that children of the revisionist were studying in Sharda Mandir School, Jamnagar. Hence, there was no nonuser of the disputed room for continuous period of six months before institution of the rent suit. Rent was remitted by money order which was refused by the landlord. The rent for 62 months was deposited in the Court on 6.9.1989 and thereafter the rent was regularly offered to the landlord but he refused to accept it. Accordingly, it was prayed that the suit be dismissed.

The Trial Court found that the revisionist was not defaulter in payment of rent. It further found that the revisionist did not use the disputed room for a continuous period of six months before institution of the suit. The suit for eviction was therefore decreed under section 13(1)(k) of the Bombay Rent Act.

An appeal was preferred by the revisionist which was dismissed. The appellate Court agreed with the findings of the trial Court on both the counts. It is, therefore, this revision.

Having heard learned Counsel for the parties and on examining the judgment of the lower appellate Court, it is clear that it is a case of concurrent findings recorded by the two Courts below on the two issues on

which decree for eviction was sought. Unless the findings of the two Courts below are found to be perverse or not in accordance with law, interference in revision under section 29(2) of the Bombay Rent Act, is hardly permissible. Even on reappraisal of evidence revisional Court will be reluctant to substitute its own views ignoring the concurrent views recorded by the two Courts below.

It is concurrently established that the revisionist did not commit default in payment of rent in as much as the rent after receipt of notice was remitted by money order which was refused. Concurrent finding on this point recorded by the two Courts below does not suffer from any manifest error of law. Hence, this finding does not require any interference.

Grievance of the revisionist however, is that the Courts below did not pass the decree for eviction in accordance with section 13(1)(k) of the Bombay Rent Act. In order to appreciate this contention it would be desirable to recapitulate the provisions of section 13(1)(k) of the Bombay Rent Act which reads as under :

"(k)that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit;".

In order to apply the aforesaid provision factual aspect of the case has to be examined. It has been informed by the learned Counsel for the respondent that no rent note was executed. As such the main purpose for which the tenancy was created cannot be established with certainty. He further stated that only rent receipt was issued. The case of the revisionist in his written statement was that he is permanent resident of village Motakhadaba where he is engaged in agricultural work right from the date of his forefathers and that for imparting education to his children, he took on rent the disputed room on 1.1.1983 on monthly rent of Rs.7/-. It was further pleaded that for educational purposes of his children the revisionist had shifted his residence from Motakhadaba Jamnagar and resided with his children in the suit premises at Jamnagar and that his children were studying in Sharda Mandir School at Jamnagar. It is further clear from these admissions of the revisionist in his written statement that he is permanent resident of village Motakhadaba and he temporarily shifted along with his wife and sons for the purposes of imparting education

to his children at Jamnagar. From this, it can be said that the purpose of tenancy was to occupy the room for imparting education to the children of the tenant. This, therefore, rules out the possibility that the tenancy was for commercial purpose. It can be said that the purpose of occupying the room was for imparting education to the children of the tenant.

This purpose was considered by the two Courts below, and more particularly, by the lower appellate Court. After examining the evidence on record and the circumstances of the case, the lower appellate Court found that it is impossible for the tenant to accommodate his wife, two major sons and grand children in a small room measuring 10'X10' with no facility of latrine, bathroom, kitchen and electricity. Oral evidence of landlord was considered so also oral evidence of the tenant by the lower appellate Court. The lower appellate Court rightly observed that the tenant though in possession of Rationcard has not filed the same to show that he is continuously residing in the suit accommodation. Casual user by the tenant, not for the purposes of residence, but only for the purposes of collecting letters, notices etc. from the disputed room was also considered by the lower appellate Court which found that casual user cannot tantamount to continuous user of the suit accommodation for the purposes of imparting education to the children of the tenant. The lower appellate Court further found that the sons of the tenant have become major. One son is serving in the State Bank of Saurashtra since 1987 and the other son is Driver. Thus, the purpose of imparting education to the sons of the revisionist was certainly over on the date of the suit. The suit was filed on 7.6.1989. So far as the grand children of the revisionist are concerned, there is statement on oath of the revisionist but the best evidence viz. the School Leaving Certificate from Sharda Mandir School was not filed nor any other documentary evidence was filed to show that the grand children of the revisionist are receiving education in Sharda Mandir School, Jamnagar.

In order to prove that the revisionist is continuously occupying the disputed room he examined one Dharmendrasinh Bhagwatsinh Rathod but this witness was not named by the defendant in examination in chief and in cross-examination that he is neighbour residing adjacent to the disputed room. On the other hand one Pravinsinh according to the revisionist was his neighbour but he was not examined. The lower appellate Court found that Dharmendrasinh gave contradictory statement and did not

lend support to the case of the defendant. He was therefore not believed. The appellate Court's view of disbelieving this witness does not require any interference in this revision. I have gone through the reasonings given by the lower appellate Court on the point which seem to be acceptable.

The circumstances of the case were also considered by the lower appellate Court. The first circumstance was that the notice of demand was served in village Motakhadaba and not at the disputed room. This, therefore, indicates that the tenant was not regularly and continuously occupying the disputed accommodation for the purpose of his residence.

Learned Counsel for the revisionist contended that the plaintiff failed to get a commission issued for ascertaining whether the room was in occupation of the defendant or not. In my opinion, the exercise of issuing commission would have been futile because relevant period is six months before the date of institution of the suit and in any event the commission could be issued only after institution of the suit and report of the Commissioner could not have thrown any light whether the room was used for continuous period of six months before institution of the suit or not. Consequently the landlord cannot be blamed for not getting a commission issued.

The lower appellate Court has also taken into consideration the fact that voluminous money orders were refused by the landlord which were received by the defendant at the suit premises. In view of this fact alone it cannot be presumed that the defendant continuously resided in the suit premises. Learned Counsel for the revisionist rightly contended that if casually the tenant was visiting the disputed premises for collecting postal articles it cannot be said that the premise was used for the main purpose viz. for occupying the same for imparting education to the children and grand children of the revisionist. Such casual visit does not amount to user of accommodation for the purposes of section 13(1)(k) of the Bombay Rent Act.

The defendant's contradictory stand in the written statement that he had shifted with his wife, two sons and grand children in single room for imparting education is not only self contradictory but also improbable as was rightly observed by the lower appellate Court. These family members without facility of latrine, bathroom, kitchen and electricity could have hardly

accommodated themselves in a small room measuring 10' X 10'.

The copy of electoral roll was also not brought on record to substantiate that the tenant was using the accommodation for the purpose for which it was let out. School Leaving Certificate or any certificate from the school was also not filed by the tenant.

In these circumstances the findings of facts recorded by the two Courts below cannot be said to be perverse. Hence, it does not require any interference.

The question for consideration now is whether on these findings decree for eviction under section 13(1)(k) of the Bombay Rent Act could have been passed or not. Under the aforesaid circumstances if the premises had not been used without reasonable cause for the purposes for which they were let out for a continuous period of six months immediately preceding the date of the suit, decree for eviction of the tenant can be passed. The requirement of this section therefore is as under :

- [1] The premises have not been used without reasonable cause for the purposes for which they were let out.
- [2] Such nonuser should be that for continuous period of six months immediately preceding the institution of the suit.
- [3] If reasonable cause for non user during this period is shown certainly decree for eviction cannot be passed.

From the findings recorded by the two Courts below it is clear that since the suit was filed on 7.6.1989 and all the sons of the tenant became major and were employed in the year 1987, the purpose for which the premises was used for imparting education to the sons of the tenant was over. The purpose of imparting education to grand children of the tenant is not proved from the evidence on record.

The notice was also served at the village address at Motakhadaba on the tenant on 16.3.1989. In these circumstances the landlord was justified in alleging that since long the room was not used by the tenant. In any event, continuous nonuser of the room for the purpose of imparting education to the sons and grand sons of the tenant viz. for the purpose for which the tenancy was

created is established. This nonuser was for continuous period of six months immediately preceding the delay of the suit and no reasonable cause for nonuser has been established. Consequently, the decree passed by the two Courts below was perfectly in accordance with section 13(1)(k) and in accordance with law. No interference is therefore required in this revision. The revision is therefore dismissed. No order as to costs.

On the request of the learned Counsel for the revisionist that the revisionist may be granted six months time to vacate the disputed room which is not opposed by the learned Counsel for the respondent, the revisionist is granted six months time from today to vacate the disputed room and hand over vacant possession to the respondent. Usual undertaking may be filed in this Court within three weeks from today.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt